IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11236 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJENDRAKUMAR KUNDANLAL AGRAWAL - Petitioner(s)
Versus
CITY DY. COLLECTOR AHMEDABAD AND ELECTION OFFICER & 2 - Respondent(s)

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Appearance :
MR SK GADHAVI for Petitioner(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/06/2006

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the respondent No.1 dated 17.5.2006

deleting the name of the petitioner from the final voters list.

2.It is the contention on behalf of the petitioner that before passing the said impugned order, no opportunity has been given to the petitioner and therefore, the impugned order dated 17.5.2006 is in breach of principles of natural justice.

3.In response to the notice issued by this Court and order dated 1.6.2006, Ms. Mita Panchal, learned AGP, appears on behalf of the respondent No.1 and has submitted that in fact, the notice was issued upon the petitioner to remain present and submit his objections, however, as the petitioner refused to accept the said notice, it was sent through UPC Post. The aforesaid facts has been disputed by the learned advocate appearing on behalf of the petitioner and therefore, there are disputed question of facts and in fact, it is not clear that even the notice has been served upon the petitioner by UPC Post or not. In view of the above, it was

suggested by the Court that let the respondent No.1 hear the petitioner and pass an appropriate order after giving an opportunity to the petitioner without entering into the aforesaid larger question and to that the respondent No.1 has submitted that the petitioner may appear before him on 6.6.2006 at 11.00 A.M. in his office and may make his submissions and on the basis of the same, an appropriate order will be passed. At this stage, Shri Tushar Mehta, learned advocate appearing on behalf of the respondent Nos. 2 and 3 has submitted that the aforesaid order can be passed, however, that may not create any right in favour of the petitioner to contest the election and the same may be considered at this stage for the purpose of allowing the petitioner to cast his vote (if ultimately the respondent No.1 takes a decision in favour of the petitioner), otherwise, it will be upsetting the entire election process as even the last date of filling up the Form for contesting the election is already over on 31.5.2006. Shri Gadhvi, learned advocate appearing on behalf of the

petitioner, has submitted that the aforesaid exercise be done at this stage for the purpose of allowing the petitioner to cast his vote (in case the respondent No.1 holds in favour of the petitioner) and the liberty will be reserved permitting the petitioner to challenge the election of the respective constituency subsequently.

4. In view of the above and considering the statement made by the respondent No.1, who is personally present in the Court, the present Special Civil Application is disposed of. The petitioner may appear before the respondent No.1 on 6.6.2006 at 11.00 A.M. and may make his submissions against the objections with regard to including his name in the voters list and the respondent no.1 may pass an appropriate order in accordance with law and on merits after hearing the petitioner on 6.6.2006. However, it is made clear and as agreed by the learned advocate appearing on behalf of the petitioner that even if the respondent No.1 passes an order in favour of the petitioner after hearing

the petitioner on 6.6.2006 and takes a decision to continue the name of the petitioner in the voters list, the same would be for the purpose of allowing the petitioner to cast his vote only at this stage and the entire election process may not be disturbed and the petitioner will not be permitted to contest the election on the basis of the said order, otherwise, it will be upsetting the election process as the last date for filling up the Form for contesting the election is already over on 31.5.2006. However, it will be open for the petitioner to challenge the election subsequently in accordance with law and if permissible.

5.With these observations, the present Special Civil Application is disposed of. Notice is discharged. However, there will be no order as to costs. Direct Service today, i.e. by 5.6.2006.

(M.R.SHAH, J.)

kdc.